1930

State of Utah v. A.G. Anderson : Abstract of Record

Utah Supreme Court

State of Utah; plaintiff.
A.G. Anderson; defendant.
A.E. Morton; Attorney for Appellant.

In the Supreme Court
of the State of Utah

THE STATE OF UTAH,
Plaintiff.

vs.

A. G. ANDERSON,
Defendant.

No. 4923

ABSTRACT OF RECORD

A. E. MORETON,
Attorney for Appellant.

INDEX.

In the Supreme Court
of the State of Utah

THE STATE OF UTAH,
Plaintiff,

vs.

A. G. ANDERSON,
Defendant.

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ABSTRACT OF RECORD

INFORMATION.

A. G. Anderson, the defendant above named having heretofore, to-wit, on the 6th day of March, 1929, been duly committed to this court by W. G. McMullin, a committing magistrate of Washington County, State of Utah, to answer to the charge hereinafter specifically set forth is accused by A. L. Larsen, District Attorney of the Fifth Judicial District, State of Utah, County of Washington, by this information of the crime of felony, to-wit, the crime of being a persistent
Tr. violator of the act prohibiting the manufacture
1 and use of intoxicating liquors and regulating the sale and traffic therein, as follows, to-wit:

That the said defendant A. G. Anderson, on the 24th day of February, 1929, at the county of Washington, State of Utah, then and there being did wilfully, unlawfully and feloniously have in his possession intoxicating liquor containing more than one half of one per cent. alcohol by volume, the said A. G. Anderson being then and there a persistent violator of the act prohibiting the manufacture and use of intoxicating liquors and regulating the sale and traffic therein, he having theretofore, to-wit, on the 20th day of June, 1928, in the Justice's Court of the Leeds Precinct, Washington County, State of Utah, been convicted of having the unlawful possession of intoxicating liquors; contrary to the form of the statute in such case made and provided and against the peace and dignity of the state of Utah.

A. L. LARSEN,
District Attorney of the Fifth Judicial District of Utah.

VERDICT.

(Title of Court and Cause)

We, the Jurors in the above case, find the defendant, A. G. Anderson guilty of a felony, to-wit, being a persistent violator of the provisions of Title 54, Laws of Utah, 1917, as charged in the 28½ information, and we the Jurors unanimously re-

commend that the Court exercise leniency in behalf of the defendant, A. G. Anderson, in passing sentence.

Date May 15, 1929.
Filed May 15, 1929.

WILSON N. LUNT, *Foreman.*
W. CLAIR ROWLEY, *Clerk.*

Defendant's request No. 1.

The court instructs you that if you believe from the evidence that the witness Mary J. Wade, placed one gallon of blackberries in a five gallon keg, and added four gallons of water thereto, and that this was done to make a preparation to be used as a sauce for flavoring foods, and that said keg with said contents was placed behind the
29 kitchen stove in the hotel of the defendant at Leeds, in Washington county, Utah, and also placed honey washed from cans and vessels in a jug or jugs or cans, for the purpose of making vinegar to be used in cooking and on the table and that said preparations were not made or intended to be used as a beverage, but, on the contrary were being made for and intended to be used for cooking and for flavors in cooking, then you should find the defendant, Not Guilty.

Refused

LEROY H. COX, *Judge.*

Defendant's request No. 2.

You are further instructed that if you believe from the evidence the contents of the five gallon keg, found by the officers back of the stove in the kitchen in the Log Cabin Inn, was intended to be used for cooking purposes and were not intended to be used as a beverage or for drinking purposes, and if you also believe that the contents of the two jugs and fruit jar or fruit jars which the officers found in said kitchen was to be made into vinegar for household and table uses and purposes, and was not intended to be made for or used for beverage purposes or as a drink of any kind, then your verdict should be for the defendant, Not Guilty.

Refused

LEROY H. COX, *Judge.*

NOTICE OF INTENTION TO MOVE FOR A NEW TRIAL.

(Title of Court and Cause)

To A. L. Larson, Esq., District Attorney of the Fifth Judicial District of the State of Utah, in and for the county of Iron:

You will please take notice that the defendant, A. G. Anderson, intends to and will move the

above named court, at the court room thereof, in the county court house, in Parowan, in Iron county, Utah, on Friday, the 17th day of May, 1929, at the hour of two o'clock P. M. of said day or as soon thereafter as Counsel can be heard, to set aside the verdict of the Jury, made and entered in the above entitled action and cause on the 15th day of May, 1929, and to grant the defendant, a new trial of said cause, upon the following grounds, to-wit:

31 1. That the Court misdirected the jury in matters of law, during the course of the trial of said cause, and the Court erred in its decisions of law and its decisions on questions of law, all of which were prejudicial to the substantial rights of the defendant above named, A. G. Anderson.

2. That the said verdict of the jury, rendered in the above entitled cause on the said 15th day of May, 1929, is contrary to law.

3. That the verdict rendered in the above entitled cause, by said jury, on the 15th day of May, 1929, is contrary to the evidence introduced on the trial of said action.

4. That new evidence has been discovered, material to the defendant and which could not, with reasonable diligence have been discovered and produced at the trial.

This motion will be made on the files, records and papers in this cause, the transcript of the Official Stenographer of the proceedings on the trial of said cause and affidavits to be hereafter prepared, served, filed and presented on the hearing of this motion.

Dated this 16th day of May, 1929.

WILLIAM F. KNOX,
Attorney for Defendant.

(Motion for new trial was denied on May 17th, 1929, Tr. 34)

CERTIFICATE OF PROBABLE CAUSE

(Title of Court and Cause)

It appearing to me, the Judge of the above entitled Court, that there is probable cause for an appeal to the Supreme Court of the State of Utah, from the judgment and sentence, made and entered in the above entitled cause, on the 17th day of May, 1929, against the above named defendant, A. G. Anderson, and that said defendant desires to appeal from said judgement and sentence.

33

It is ORDERED that the execution of said judgment be and the same is hereby stayed, pending such appeal to the Supreme Court of the State of Utah.

It is Further Ordered that, pending such appeal, said defendant A. G. Anderson, be and he is hereby admitted to bail in the sum of Seven Hundred and Fifty (750) Dollars.

Dated this 17th day of May, 1929.

LEROY H. COX,
Judge District Court.

NOTICE OF APPEAL.

(Title of Court and Cause)

To W. Clair Rowley, the Clerk of the District Court of the Fifth Judicial District of the State of Utah, in and for the County of Iron, and to A. L. Larson, Esquire, the District Attorney in and for the Fifth Judicial District of the State of Utah;

36 You, and each of you, will please take Notice, that the above named defendant, A. G. Anderson, hereby appeals to the Supreme Court of the State of Utah, from the whole and every part of the Judgment of the District Court of the Fifth Judicial District of the State of Utah, in and for the County of Iron, in the above entitled action, made and entered in the above entitled action on the 17th day of May, 1929, in favor of the plaintiff, The State of Utah, and against the defendant, aboved named, A. G. Anderson.

This appeal is taken on questions of both law and facts.

Dated this 7th day of June, 1929.

WILLIAM F. KNOX,
Attorney for Defendant.

No bill of exceptions was ever settled or filed and the files in the case were transmitted to the Supreme Court of the State of Utah pursuant to said notice of appeal and the appeal taken and perfected in said action on August 5th, 1929. The appeal was filed in the Supreme Court on August 7, 1929.

ASSIGNMENTS OF ERROR.

(Title of Court and Cause)

Now comes the appellant, A. G. Anderson, and assigns the following errors committed by the trial court upon which he will and does rely for reversal of the judgment made and entered herein against him in the trial court:

(1) The information filed against the defendant herein does not state facts sufficient to constitute a public offense.

(a) It is not alleged therein that the alleged possession of intoxicating liquors by the defendant was "without a permit or authority of law".

(b) It is not alleged therein that the prior conviction of defendant was for a violation of Title 54, Compiled Laws of Utah, 1917, commonly known as the Prohibition Act, and for aught that appears therein such prior conviction may have been for a violation of some city or town ordinance.

(c) The defendant is not charged in said information with violating any specific law of the State of Utah, but merely with "Being a persistent violator of the act prohibiting the manufacturing and use of intoxicating liquors," without further definition or description of the act referred to. (Tr. 4, Ab. 1)

(2) The court erred in its instructions to the jury in failing to define and make a distinction between intoxicating liquor and preparations or products not intended for beverage purposes, of which one may have the lawful possession, and such failure to so instruct was and is such manifest and prejudicial error that even in the absence of a bill of exceptions this court should take notice thereof, and particularly so since the defense was that the preparations in the possession of the defendant were not made for, nor intended as a beverage. (Tr. 20-30, Ab. 3-4)

WHEREFORE, appellant prays that the judgment herein be set aside and the case dismissed.

A. E. MORETON,
Attorney for Appellant.